

MAY 16 2006


PTO/SB/21 (09-04)

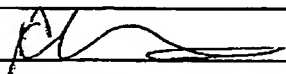
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/780,255	
	Filing Date	February 17, 2004	
	First Named Inventor	Eldon Roth	
	Art Unit	1761	
	Examiner Name	Arthur L. Corbin	
Total Number of Pages in This Submission	19	Attorney Docket Number	317.1030001

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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Firm Name	The Culbertson Group, P.C.		
Signature			
Printed name	Russell D. Culbertson		
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FEE TRANSMITTAL
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)
500.00**Complete if Known**

Application Number	10/780,255
Filing Date	February 17, 2004
First Named Inventor	Eldon Roth
Examiner Name	Arthur L. Corbin
Art Unit	1761
Attorney Docket No.	317.1030001

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 50-3277 Deposit Account Name: The Culbertson Group, PC

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
_____ - 100 = _____	_____ / 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)


Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Fee for Appeal Brief

Fees Paid (\$)

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SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	32,124	Telephone	512-327-8932
Name (Print/Type)	Russell D. Culbertson	Date	May 16, 2006		

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PATENT
317.1030001IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)
Eldon Roth)
Serial No.: 10/780,255) Group Art Unit: 1761
Filed: February 17, 2004) Examiner: Arthur L. Corbin
FOR: METHOD FOR PRODUCING A)
pH ENHANCED COMMINUTED) Via Facsimile: 571-273-8300
MEAT PRODUCT)

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BRIEF OF APPELLANT

This is an appeal from the Final Office Action mailed September 16, 2005 (the "Final Office Action"), rejecting claims 17 through 37 in the above-identified application. Appellant submits this brief to the Board of Patent Appeals and Interferences within the two-month period following the Notice of Appeal filed March 16, 2006.

This Brief of Appellant is accompanied by a charge authorization (Credit Card Payment Form PTO-2038) for the fee of \$500.00 due under 37 C.F.R. §41.20(b)(2).

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I. REAL PARTY IN INTEREST (37 C.F.R. §41.37(c)(1)(i))

The above-described patent application is assigned to Freezing Machines, Inc., the real party in interest.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §41.37(c)(1)(ii))

There is no related Appeal or Interference before the United States Patent and Trademark Office.

III. STATUS OF CLAIMS (37 C.F.R. §41.37(c)(1)(iii))

The status of the claims is as follows:

Allowed Claims: None

Claims to which Objections apply: None

Claims withdrawn from consideration: None

Claims Canceled: 1-16, 22, 27, 33-37

Claims Rejected: 17 through 37

Claims Appealed: 17 through 21, 23 through 26, and 28 through 32

IV. STATUS OF AMENDMENTS (37 C.F.R. §41.37(c)(1)(iv))

The Advisory Action mailed February 1, 2006, indicates that the claim amendments included with the Response to Final Office Action filed January 12, 2006, have been entered in the case. Thus, the Claims Appendix included herewith reflects the state of the claims as amended according to the Response to Final Office Action filed January 12, 2006.

1 **V. SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. §41.37(c)(1)(v))**

2 Independent Claim 17

3 Claim 17 is directed to a method that includes adding an ammonium hydroxide solution
4 to an initial comminuted meat product to produce an intermediate meat product. (Spec. at p. 4,
5 lines 16-18; p. 9, lines 7-11). Claim 17 further includes applying mechanical action to the
6 intermediate meat product. (Spec. at p. 3, lines 17-20; p. 5. line 17- p. 6, line 3; p. 14, lines 1-7).

7 Independent Claim 23

8 Claim 23 is directed to a method that includes first adding an ammonium hydroxide
9 solution to a comminuted meat product. (Spec. at p. 4, lines 16-18; p. 9, lines 7-11). After
10 adding the ammonium hydroxide solution to the comminuted meat product the method includes
11 forcing the comminuted meat product through a conduit. (Spec. at p. 5. line 19- p. 6, line 3; p. 14,
12 lines 4-7)

13 Independent Claim 28

14 Claim 28 is directed to a method that includes first adding an ammonium hydroxide
15 solution to a ground meat. (Spec. at p. 4, lines 16-18; p. 9, lines 7-11). After the ammonium
16 hydroxide solution is added to the ground meat, the method includes applying mechanical action
17 to the ground meat. (Spec. at p. 3, lines 17-20; p. 5. line 17- p. 6, line 3; p. 14, lines 1-7).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. §41.37(c)(1)(vi))

All of the appealed claims, claims 17 through 21, 23 through 26, and 28 through 32, stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,433,142 to Roth (the "142 patent") in view of U.S. Patent No. 3,023,109 to Hines ("Hines" or the "Hines patent").

VII. ARGUMENT (37 C.F.R. §41.37(c)(1)(vii))

THE CLAIMS ARE PATENTABLE OVER THE 142 PATENT IN VIEW OF HINES

The Appellant respectfully submits that the appealed claims are not obvious over the 142 patent in view of Hines on two independent grounds. First, the proposed combination of the 142 patent and Hines fails to include each element required in the rejected claims. Second, there is no teaching, suggestion, or motivation in the prior art to combine teachings from the 142 patent and Hines as proposed in the Final Office Action.

A. THE PROPOSED COMBINATION OF REFERENCES FAILS TO SHOW EACH ELEMENT REQUIRED IN EACH INDEPENDENT CLAIM

Element (a) of independent claim 17 in the present application requires the step of "adding an ammonium hydroxide solution to an initial comminuted meat product to produce an intermediate meat product." Each of the other two independent claims in the case require a similar limitation as to adding an ammonium hydroxide to a comminuted meat. In particular, element (a) of claim 23 requires "adding an ammonium hydroxide solution to a comminuted meat product" while element (a) of claim 28 requires adding an ammonium hydroxide solution to a particular type of comminuted meat, that is, ground meat. Thus, in order to support an obviousness rejection of these claims under 35 U.S.C. 103, the prior art as properly combined or

1 modified must show the step of “adding an ammonium hydroxide solution to a comminuted
2 meat.” However, the combination of the 142 patent and the Hines patent proposed in the Final
3 Office Action fails to teach or even suggest “adding an ammonium hydroxide solution to a
4 comminuted meat” as required by the present claims. Because the proposed combination of
5 references does not include each element in the appealed claims, the Appellant believes that the
6 obviousness rejection is in error and should be withdrawn.

7 The 142 patent does not disclose any use of ammonia or ammonium hydroxide solution.
8 Thus, the Final Office Action relies exclusively on the Hines patent for providing the suggestion
9 to apply an ammonium hydroxide solution to a comminuted meat. In particular, the Final Office
10 Action points to Example 2 and claim 1 of the Hines patent as suggesting contacting meat with
11 aqueous ammonia to improve the color of the meat. (Final Office Action at paragraph 4).
12 However, Example 2 of the Hines patent discloses placing a thin layer of “ammonia hydroxide”
13 in the bottom of a flask and permitting the material to go to equilibrium with the atmosphere
14 above it. The meat was then “placed in the atmosphere **but not in contact with the liquid.**”
15 (Emphasis added) (Hines, Col. 3, lines 25 and 26). Similarly, claim 1 of the Hines patent
16 describes subjecting the meat to an “atmosphere” containing from 5% to 25% of ammonia for
17 from ten seconds to five minutes. Based on these sections of the Hines patent and the rest of the
18 disclosure in Hines, the Appellant submits that there is no suggestion or teaching in the Hines
19 patent to add an ammonium hydroxide solution to a meat product of any type. In fact, Example 2
20 of the Hines patent seems to indicate that ammonium hydroxide should not be placed in contact
21 with the meat in view of the portion of the statement in bold above.

1 The Advisory Action mailed February 1, 2006, in the present application indicates that
2 the appealed claims are not in condition for allowance because "ammonium hydroxide will be
3 formed in situ upon contact of the meat with gaseous ammonia in Hines due to the presence of
4 water or moisture in and on the meat." (Advisory Action continuation sheet). At the outset, this
5 statement assumes that there is sufficient water at the surface of the meat to form an ammonium
6 hydroxide solution. The Advisory Action provides no basis for this assumption. Furthermore,
7 the appealed claims do not require forming ammonium hydroxide in situ in the meat product by
8 the application of ammonia gas. Rather, the present claims specifically require "adding an
9 ammonium hydroxide solution to the comminuted meat product." Forming ammonium
10 hydroxide in situ in a meat product is not "adding an ammonium hydroxide solution to the meat
11 product." In contrast, forming ammonium hydroxide in situ in a meat product merely employs
12 the moisture in the meat itself to help form an ammonium hydroxide solution, but does not "add"
13 any solution to the meat.

14 Because the proposed combination of the 142 patent and the Hines patent does not
15 include the step of adding ammonium hydroxide solution to a meat product, the appealed claims
16 cannot be considered obviousness under 35 U.S.C. §103 in view of the proposed combination.
17 Thus, the Appellant respectfully submits that the rejection of the appealed claims under 35
18 U.S.C. §103 is in error and should be reversed.

**B. THERE IS NO TEACHING, SUGGESTION, OR MOTIVATION TO COMBINE
THE 142 PATENT AND HINES PATENT AS PROPOSED IN THE FINAL
OFFICE ACTION**

In the last sentence on page 2, the Final Office Action states that since “ammonia is clearly disclosed as being a typical meat color improving gas according to Hines, the skilled artisan would have definitely been motivated to use ammonia as a working gas in Roth,” referring to the 142 patent as “Roth.” The Appellant submits that this statement regarding the use of ammonia gas does not support any combination or modification of the cited references to include a step of “adding an ammonium hydroxide solution” to a comminuted meat product. That is, even if the teachings of the 142 patent and the Hines patent were combined, the resulting combination would still not teach or suggest “adding an ammonium hydroxide solution” to a meat product as required by the appealed claims.

Furthermore, the Appellant submits that one of ordinary skill in the art acting at the time of the present invention would not have found it obvious to use ammonia gas as the working gas in the process disclosed in the 142 patent in view of the ammonia treatment limitations taught by Hines and in view of the gas treatment parameters disclosed in the 142 patent.

The treatment process disclosed in the 142 patent relies on high working gas pressures for several minutes or lower pressures for longer periods of time in order to damage microbes in the meat product being treated. That is, the process described in the 142 patent relies on pressurizing the meat in the presence of a working gas and holding the gas pressure for a period of time. The gas pressure is then released in an effort to physically damage the microbes. The hold period required for a 3500 psi operating pressure is disclosed as being two minutes (142 patent at Col. 6, lines 32-33). The 142 patent also teaches that lower operating pressures require longer operating

1 periods, that is, longer pressure hold periods (142 patent at Col. 6, lines 39-41). With regard to
2 the types of gasses that may be employed in the process, the 142 patent indicates that the process
3 may employ any working gas that is compatible with the particular foodstuff being treated (142
4 patent at Col. 6, lines 10-11). There is no suggestion in the 142 patent that ammonia gas is a
5 suitable working gas for the treatment process.

6 The Hines patent is directed to methods for improving the color in raw meat. As
7 discussed above, the process in Hines includes placing the meat in an atmosphere including
8 ammonia gas. At the paragraph beginning at Col. 1, line 59, the Hines patent discloses that the
9 ammonia exposure time must be limited in order to prevent the treated meat from becoming
10 leathery. The longest time suggested by the Hines patent for exposure to an atmosphere
11 including ammonia is six minutes at the top of Col. 2. There is no suggestion anywhere in the
12 Hines patent or elsewhere in the prior art that elevated treatment pressures are suitable for use in
13 contacting meat with ammonia gas. Furthermore, the Hines patent discloses in the paragraph
14 beginning at line 10 of Col. 2 that "nearer the maximum times" of ammonia treatment, there is a
15 tendency for the meat to retain a distinct odor of ammonia. Thus, Hines goes on to suggest that
16 ammonia concentration and exposure time should be kept as low as is consistent with producing
17 the desired red color. (Hines at Col. 2, lines 15-17).

18 Considering that Hines on the one hand teaches that ammonia gas exposure to meat must
19 be limited in order to avoid adverse effects in the meat, and considering that the 142 patent on
20 the other hand teaches that a two minute operating period is required in the 142 patent process
21 even at very high gas pressures (3500 psi), the Appellant believes it would not have been obvious
22 to use ammonia gas as a working gas in the pressurize and release process described in the 142

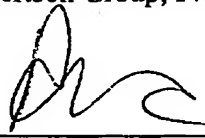
- 1 patent. Thus, it would not have obvious to combine the teachings of the 142 patent and Hines
- 2 patent as proposed in the Final Office Action.

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VIII. CONCLUSION

For all of these reasons, the Appellant submits that claims 17 through 21, 23 through 26, and 28 through 32 are entitled to allowance and respectfully requests that the Board reverse the decision of the Examiner rejecting these claims.

Respectfully submitted,

The Culbertson Group, P.C.

Date: 16 May 2006 By: 

Russell D. Culbertson, Reg. No. 32,124
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Austin, Texas 78746
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ATTORNEYS FOR APPELLANT

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, (Facsimile No. 571.273.8300) on May 16, 2006.

Russell D. Culbertson, Reg. No. 32,124 

IX. CLAIMS APPENDIX (37 C.F.R. §41.37(c)(1)(viii))

1-16 (Canceled)

17. A method including:

(a) adding an ammonium hydroxide solution to an initial comminuted meat product to produce an intermediate meat product; and

(b) applying mechanical action to the intermediate meat product.

18. The method of claim 17 wherein the step of applying mechanical action to the intermediate meat product includes forcing the intermediate meat product through a conduit.

19. The method of claim 17 wherein the step of applying mechanical action to the intermediate meat product includes applying a primary mechanical action by agitating the intermediate meat product in a vessel.

20. The method of claim 19 further including the step of applying a vacuum to the intermediate meat product in the vessel as the primary mechanical action is applied.

21. The method of claim 19 wherein the step of applying mechanical action to the intermediate meat product includes applying a secondary mechanical action to the intermediate meat product by forcing the intermediate meat product through a conduit.

1 22 (Canceled)

2

3 23. A method including:

4 (a) adding an ammonium hydroxide solution to a comminuted meat product; and

5 (b) forcing the comminuted meat product through a conduit after adding the

6 ammonium hydroxide solution to the comminuted meat product.

7

8 24. The method of claim 23 further including applying a primary mechanical action to the
9 comminuted meat product after placing the comminuted meat product in contact with
10 ammonia, the primary mechanical action being applied by agitating the comminuted meat
11 product in a vessel.

12

13 25. The method of claim 24 further including the step of applying a vacuum to the
14 comminuted meat product in the vessel as the primary mechanical action is applied.

15

16 26. The method of claim 24 further including applying a secondary mechanical action to the
17 comminuted meat product by forcing the comminuted meat product through an additional
18 conduit after applying the primary mechanical action.

19

20 27 (Canceled)

21

22 28. A method including:

1 (a) adding an ammonium hydroxide solution to a ground meat; and

2 (b) applying mechanical action to the ground meat after adding the ammonium
3 hydroxide solution.

4
5 29. The method of claim 28 wherein the step of applying mechanical action to the ground
6 meat includes forcing the ground meat through a conduit.

7
8 30. The method of claim 28 wherein the step of applying mechanical action to the ground
9 meat includes applying a primary mechanical action by agitating the ground meat in a
10 vessel.

11
12 31. The method of claim 30 further including the step of applying a vacuum to the ground
13 meat in the vessel as the primary mechanical action is applied.

14
15 32. The method of claim 30 wherein the step of applying mechanical action to the ground
16 meat includes applying a secondary mechanical action to the ground meat by forcing the
17 ground meat through a conduit after adding the ammonium hydroxide solution to the
18 ground meat.

19 33 - 37 (Canceled).

X. EVIDENCE APPENDIX (37 C.F.R. §41.37(c)(1)(ix))

The Appellant has not relied upon any evidence in this appeal according to 37 C.F.R.

§41.37(c)(1)(ix).

XI. RELATED PROCEEDINGS APPENDIX (37 C.F.R. §41.37(c)(1)(x))

There is no related Appeal or Interference before the United States Patent and Trademark

Office.